

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
TEXARKANA DIVISION

LARRY MORRIS, JR.

PLAINTIFF

v.

Civil No. 4:16-CV-04119

SHERIFF JAMES A. SINGLETON, *et. al.*

DEFENDANTS

**MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

This is a civil rights action filed by the Plaintiff pursuant to 42 U.S.C. § 1983. Pursuant to the provisions of 28 U.S.C. § 636(b)(1) and (3)(2011), the Honorable Susan O. Hickey, United States District Judge, referred this case to the undersigned for the purpose of making a Report and Recommendation.

Currently before the Court is Plaintiff's failure to obey a Court Order. After careful consideration, the Court makes the following Report and Recommendation.

**I. BACKGROUND**

Defendants filed a Motion for Summary Judgment on December 18, 2017. (ECF No. 22). On December 19, 2018, the Court entered an Order directing Plaintiff to file a Response to the Summary Judgment Motion by January 9, 2018. (ECF No. 25). On January 17, 2018, Plaintiff filed a Motion for Extension of Time to file his Response. (ECF No. 26). On January 18, 2018, the Court entered an Order granting Plaintiff's Motion, and giving Plaintiff until February 8, 2018, to file his Response. (ECF No. 27).

On February 26, 2018, Plaintiff filed a Motion to Compel, a Motion to Appoint Counsel, and a second Motion for Extension of Time to File his Response. (ECF No. 30). The Motion for

Counsel was denied on March 1, 2018. (ECF No. 31). Defendants filed a Response in Opposition to Plaintiff's Motions to Compel and for an additional Extension of Time. (ECF No. 32).

On March 22, 2018, the Court entered an Order denying Plaintiff's Motion to Compel as Moot, as Plaintiff had received the video exhibit in question. The Court granted Plaintiff's Motion for Extension of Time to Respond, giving him until April 6, 2018, to file his Summary Judgment Response. (ECF No. 33). This Order was not returned as undeliverable. To date, Plaintiff has not filed his Summary Judgment Response.

## II. LEGAL STANDARD

The Federal Rules of Civil Procedure specifically contemplate dismissal of a case on the grounds that the plaintiff failed to prosecute or failed to comply with orders of the court. Fed. R. Civ. P. 41(b); *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962) (stating that the district court possesses the power to dismiss *sua sponte* under Rule 41(b)). Pursuant to Rule 41(b), a district court has the power to dismiss an action based on "the plaintiff's failure to comply with *any* court order." *Brown v. Frey*, 806 F.2d 801, 803-04 (8th Cir. 1986) (emphasis added).

## III. ANALYSIS

Although Plaintiff has been granted two extensions of time to do so, he has failed to comply with a Court Order and file his Summary Judgment Response. Accordingly, pursuant to Federal Rule of Civil Procedure 41(b) and Local Rule 5.5(c)(2) Plaintiff's Complaint should be dismissed without prejudice for failure to comply with the Court's Local Rules and Orders.

Accordingly, I recommend that Plaintiff's case be DISMISSED WITHOUT PREJUDICE.

**The parties have fourteen (14) days from receipt of the Report and Recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. Plaintiff is reminded**

**that objections must be both timely and specific to trigger de novo review by the District court.**

DATED this 26th day of April 2018.

*/s/ J. Marschewski*

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HON. JAMES R. MARSCHEWSKI  
UNITED STATES MAGISTRATE JUDGE